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CIRCUIT COURT
DANE COUNTY, WI
2020CV000454

STATE OF WISCONSIN CIRCUIT COURT BRANCH 8 DANE COUNTY

JOHN and JANE DOE 1, et al.,

Plaintiffs,

v. Case No. 20-CV-454

MADISON METROPOLITAN SCHOOL DISTRICT,

Defendant.

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO PROCEED USING PSEUDONYMS

INTRODUCTION

Anonymous litigation has become an accepted method of proceeding in appropriate cases, both in Wisconsin and around the country, and this is a paradigm case for allowing Plaintiffs to sue anonymously. The Plaintiffs here—parents of minor children in the Madison School District—challenge the District's Policy enabling their children to socially transition to a different gender identity at school without parental notice, involvement, or consent, as a violation of their constitutional right to direct the upbringing of their children. The Fifth, Sixth, Seventh, and Ninth Circuits, as well as multiple district courts, have allowed parents to sue anonymously in nearly identical circumstances: where parents brought challenges to various policies intermixing schools with religion as a violation of the First Amendment (the federal analogue to article 1, section 18 of the Wisconsin Constitution, which Plaintiffs invoke here). *E.g.*, *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 658 F.3d 710, 721–24 (7th Cir. 2011). Courts recognize that cases like these tend to arouse strong emotions in the affected community and therefore create a significant risk that the

plaintiffs or their children will suffer social ostracism, harassment, economic injury, governmental retaliation, and even physical violence. And, given that these cases ultimately turn on the purely legal question of whether a controversial policy is constitutional, courts regularly find that there is little to no need for the public or the school district to know the plaintiffs' identities.

As in those similar cases, this case raises several issues which are likely to generate strong reactions in the community: the interplay of transgenderism, the protection of children, the role of public schools, respect for religious freedom, and parents' rights. Given the sensitive issues, Plaintiffs reasonably fear that they or their children will suffer harassment and retaliation for their participation in this lawsuit. Allowing Plaintiffs' to proceed anonymously will not prejudice the District in any way, so the safety, well-being, and privacy of Plaintiffs and their children far outweigh the District's and public's interest in knowing their identities. Accordingly, Plaintiffs respectfully request an order permitting them to proceed with this case using pseudonyms.

ARGUMENT

I. Both Wisconsin Courts and Courts Around the Country Allow Plaintiffs to Sue Using Pseudonyms in Appropriate Circumstances

Although anonymous lawsuits are an exception to the normal procedure for civil litigation, this Court unquestionably has the authority to allow Plaintiffs to proceed using pseudonyms. Wisconsin Statute 801.21 gives circuit courts broad authority to seal or redact any "portion of a document" or "item[ ] of information within an otherwise publicly accessible document" whenever there are "sufficient grounds to restrict public access"—and those "grounds" can come from "constitutional, statutory, [or] common law." Wis. Stat. § 801.21(1), (4). The Wisconsin Supreme Court has also held that circuit courts have "inherent power … to limit public access to judicial records when the administration of justice requires it." *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 556, 334 N.W.2d 252 (1983).

Consistent with this authority, Wisconsin courts have allowed civil plaintiffs to sue anonymously by using pseudonyms in a number of cases. *See*, *e.g.*, *Doe 56 v. Mayo Clinic Health Sys.--Eau Claire Clinic, Inc.*, 2016 WI 48, 369 Wis. 2d 351, 880 N.W.2d 681; *Milwaukee Teachers' Educ. Ass'n v. Milwaukee Bd. of Sch. Directors*, 227 Wis. 2d 779, ¶ 3, 596 N.W.2d 403 (1999) (the plaintiffs included James Roe 1-5 and Jane Roe 1-2); *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 565 N.W.2d 94 (1997); *Doe by Doe v. Roe*, 151 Wis. 2d 366, 444 N.W.2d 437 (Ct. App. 1989); *see also Doe v. Certain Interested Underwriters at Lloyds London*, 2012 WI App 52, 340 Wis. 2d 742, 813 N.W.2d 248 (unpublished). And the Court of Appeals has, on its own initiative, "amended the caption to shield [a party's] identity." *See*, *e.g.*, *State v. Doe*, 2005 WI App 68, ¶ 1 n.1, 280 Wis. 2d 731, 697 N.W.2d 101.

Wisconsin Statutes also place a special emphasis on protecting the identities of minor children and their parents. Children's school records, for example, are confidential and exempt from disclosure under the open records laws. Wis. Stat. § 118.125(2); *State ex rel. Blum v. Bd. of Educ., Sch. Dist. of Johnson Creek*, 209 Wis. 2d 377, 383–85, 565 N.W.2d 140 (Ct. App. 1997). And a variety of statutes require whole classes of cases involving children to be confidential (in other words, the *entire* case file is sealed), including adoption cases, Wis. Stat. § 48.93(1d), certain paternity proceedings, Wis. Stat. § 767.853, CHIPs proceedings under Chapter 48, Wis. Stat. § 48.396(2)(a), and JIPs proceeding under Chapter 938, Wis. Stat. § 938.396(2)(a). For confidential cases like these, Wisconsin's rules of appellate procedure require briefs and other filings to replace names with "initials or other appropriate pseudonym," Wis. Stat. §§ 809.19(1)(g); 809.81(8), and even call specific attention to protecting the confidentiality of "juveniles and parents of juveniles," Wis. Stat. § 809.19(2)(a). Wisconsin courts routinely use pseudonyms for

juveniles and their parents in such cases. *See*, *e.g.*, *In re A. P.*, 2019 WI App 18, ¶ 1, 386 Wis. 2d 557, 927 N.W.2d 560; *In re C.R.*, 2016 WI App 24, ¶ 1, 367 Wis. 2d 669, 877 N.W.2d 408.

Courts around the country also regularly allow plaintiffs to file lawsuits anonymously, even when there is no specific rule or procedure for doing so. *See generally*, Donald P. Balla, *John Doe Is Alive and Well: Designing Pseudonym Use in American Courts*, 63 Ark. L. Rev. 691 (2010); 67A *C.J.S. Parties* § 174. For example, the federal rules of civil procedure require a complaint to "name all the parties," Fed. R. Civ. P. 10, and do not provide a mechanism for using a pseudonym, yet nearly every federal circuit has recognized that plaintiffs may sue anonymously in certain circumstances. *See*, *e.g.*, *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 188–91 (2d Cir. 2008); *Doe v. Colautti*, 592 F.2d 704, 705 (3d Cir. 1979); *James v. Jacobson*, 6 F.3d 233, 238–43 (4th Cir. 1993); *Doe v. Stegall*, 653 F.2d 180, 184–86 (5th Cir. 1981); *Doe v. Porter*, 370 F.3d 558, 560–61 (6th Cir. 2004); *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 658 F.3d 710, 721–24 (7th Cir. 2011)[1]; *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067–69 (9th Cir. 2000); *Coe v. U.S. Dist. Court for Dist. of Colorado*, 676 F.2d 411, 415–18 (10th Cir. 1982); *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 684–87 (11th Cir. 2001); *see also In re Sealed Case*, 931 F.3d 92, 96–97 (D.C. Cir. 2019).

Even the United States Supreme Court has implicitly endorsed the practice, most famously in *Roe v. Wade*, 410 U.S. 113, 124 (1973) and *Doe v. Bolton*, 410 U.S. 179, 187 (1973) ("Our decision in *Roe v. Wade*, establishes that, despite her pseudonym, we may accept as true, for this case, Mary Doe's existence and her pregnant state."). *See also Plyler v. Doe*, 457 U.S. 202 (1982); *Poe v. Ullman*, 367 U.S. 497, 498 n. 1 (1961).

[1] The Seventh Circuit later granted rehearing en banc and vacated the panel's opinion in this case, but then "adopt[ed] the panel's original analysis on the issue[ ] of … anonymity." *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 842–43 (7th Cir. 2012).

Wisconsin appellate courts have not yet established a test for when a lawsuit may be filed anonymously, but federal courts have, providing a useful "common law" framework that this Court may rely on. *See* Wis. Stat. § 801.21(4). Federal courts uniformly frame the inquiry as "a balancing test that weighs the plaintiff's need for anonymity against countervailing interests in full disclosure," and have identified a variety of factors to consider in deciding whether to allow a plaintiff to sue anonymously. *Sealed Plaintiff*, 537 F.3d at 189 (surveying caselaw); *Elmbrook Sch. Dist.*, 658 F.3d at 722. These factors include: (1) whether the case involves minor children or the parents of minor children, *Elmbrook Sch. Dist.*, 658 F.3d at 724; *Stegall*, 653 F.2d at 186; (2) whether "the litigation involves matters that are highly sensitive and of a personal nature," such as controversial medical issues, *Sealed Plaintiff*, 537 F.3d at 190 (citation omitted); *Jacobson*, 6 F.3d at 238; *e.g. Aware Woman Center*, 253 F.3d at 685 (abortion); *Roe v. Wade*, 410 U.S. 113 (same); *Ullman*, 367 U.S. 497 (birth control); (3) whether the case "implicate[s] deeply held beliefs [that] provoke intense emotional responses," such as "[l]awsuits involving religion," *Elmbrook Sch. Dist.*, 658 F.3d at 723; *Stegall*, 653 F.2d at 186; (4) whether there is a "danger of retaliation" due to the sensitive issues raised in a lawsuit, *Elmbrook Sch. Dist.*, 658 F.3d at 723; *Stegall*, 653 F.2d at 186; *Sealed Plaintiff*, 537 F.3d at 190; (5) whether the lawsuit "challeng[es] the actions of the government," *Sealed Plaintiff*, 537 F.3d at 190; *Jacobson*, 6 F.3d at 238; (6) whether "because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities," *Sealed Plaintiff*, 537 F.3d at 190 (citation omitted), and (7) whether "the defendant is prejudiced by allowing the plaintiff to press his claims anonymously," *Sealed Plaintiff*, 537 F.3d at 190; *Elmbrook Sch. Dist.*, 658 F.3d at 724.

Especially relevant here, at least four federal circuits have permitted parents to anonymously challenge school district policies for violating sensitive constitutional rights. In *Doe*

v. Elmbrook School District, the Seventh Circuit held that a group of parents and students could bring an anonymous First Amendment challenge to a school district's practice of holding high school graduations at a church. 658 F.3d at 717, 721–24. Because "[l]awsuits involving religion can implicate deeply held beliefs and provoke intense emotional responses," the Court found a significant risk of retaliation if the Plaintiffs were identified. *Id*. at 723–24. And this risk was "particularly compelling" given that the case involved children and was "intimately tied to District schools." *Id*. at 724. The parents were also entitled to anonymity because identifying them "would expose the identities of their children." *Id*. Finally, given the nature of the legal issue, the Court found no "adverse effect on the District or on its ability to defend itself." *Id*. Similarly, in *Doe v. Stegall*, the Fifth Circuit allowed a mother and her children to anonymously challenge "the constitutionality of prayer and Bible reading exercises in Mississippi public schools." 653 F.2d at 181. "[R]eligion is perhaps the quintessentially private matter," the Court explained, and the plaintiffs, "by filing suit, [had] made revelations about their personal beliefs and practices," risking "retaliation against [them] for filing this lawsuit." *Id*. at 186. The Court found "especially persuasive" that the case involved children. *Id*. Likewise, the Sixth Circuit let parents anonymously challenge their school district's Bible education program because the lawsuit "challeng[ed] a government activity," "force[d] Plaintiffs to reveal their beliefs about a particularly sensitive topic that could subject them to considerable harassment," and was "brought on behalf of very young children." *Porter*, 370 F.3d at 560. Finally, the Ninth Circuit permitted a parent to anonymously challenge a school district policy allowing graduation speakers to "inject prayers and religious songs into the graduation program" because the parent "feared retaliation by the community" for raising the sensitive First Amendment claim. *Doe v. Madison Sch. Dist. No. 321*, 147 F.3d 832, 834 n.1 (9th Cir. 1998), vacated on other grounds, 177 F.3d 789 (9th Cir.1999) (en banc); *see*

Advanced Textile Corp., 214 F.3d at 1067 (citing *Madison School District* affirmatively). *See also Doe v. Harlan Cty. Sch. Dist.*, 96 F. Supp. 2d 667, 670–71 (E.D. Ky. 2000) (allowing parents to anonymously challenge a school district's practice of "hanging the Ten Commandments in classrooms"); *Freedom From Religion Found., Inc. v. Emanuel Cty. Sch. Sys.*, 109 F. Supp. 3d 1353, 1355 (S.D. Ga. 2015) (allowing parents to anonymously challenge "prayer in a public school classroom.").

II. Plaintiffs Have Multiple Compelling Grounds for Anonymity in this Case.

This is exactly the type of case that warrants allowing Plaintiffs to proceed anonymously. Indeed, the facts here are on all fours with *Elmbrook School District, Stegall*, *Porter*, *Madison School District*, *Harlan County School District*, and *Emanuel County School System*: this lawsuit involves a constitutional challenge to a school district policy, including a claim under Wisconsin's version of the First Amendment, brought by parents, on behalf of themselves and their minor children, raising a sensitive and controversial issue that evokes strong reactions and creates a substantial risk of harassment or retaliation against Plaintiffs or their children. *See supra* pp. 5–7. That these cases are directly on point provides more than sufficient "common law" grounds, Wis. Stat. 801.21(4), for this Court to grant Plaintiffs' motion to pursue this case anonymously, either directly under Section 801.21 or under this Court's inherent authority to "limit public access to judicial records when the administration of justice requires it." *Bilder*, 112 Wis. 2d at 556.

But even putting these on-point cases aside, this case presents nearly every circumstance that courts have identified as sufficient to justify anonymity.

First, and most importantly, this case directly implicates Plaintiffs' minor children, which courts have repeatedly emphasized is a "particularly compelling," *Elmbrook Sch. Dist.*, 658 F.3d at 724, and "especially persuasive," *Stegall*, 653 F.2d at 181, reason for anonymity. *E.g.*, *Doe v. Vill. of Deerfield*, 819 F.3d 372, 377 (7th Cir. 2016) ("a litigant's use of a fictitious name is

warranted … [to] protect[ ] the identities of children."); *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997) ("fictitious names are allowed when necessary to protect *the privacy of children*.") (emphasis added). Like these federal cases, Wisconsin Statutes also reflect the importance of protecting the identities of "juveniles and parents of juveniles" in sensitive cases, *e.g.* Wis. Stat. §§ 809.19(2)(a); 48.93(1d); 48.396(2)(a); 767.853; 938.396(2)(a); *see also* Wis. Stat. § 118.125(2) (confidentiality of students' education records). Plaintiffs are all parents of minor children in the Madison School District, *see*, *e.g.*, John Doe 1 Aff. ¶ 2,[2] and bring this lawsuit to challenge a policy that directly affects their children. Requiring Plaintiffs to identify themselves would necessarily "expose the identities of their children." *Elmbrook Sch. Dist.*, 658 F.3d at 724; *see also J.W. v. D.C.*, 318 F.R.D. 196, 199 (D.D.C. 2016) ("J.W. and his parents' privacy interests are intractably intertwined."); *P.M. v. Evans-Brant Cent. Sch. Dist.*, No. 08-CV-168A, 2008 WL 4379490, at *3 (W.D.N.Y. Sept. 22, 2008) (the privacy protection afforded to a minor "would be eviscerated" unless the parent was also permitted to proceed by pseudonym). And protecting Plaintiffs' children from exposure is especially critical given the sensitive issues this case raises.

Second, there is a significant danger of retaliation against Plaintiffs or their children for participating in this case, and courts have repeatedly found this to be "a compelling ground for allowing a party to litigate anonymously." *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004); *Elmbrook Sch. Dist.*, 658 F.3d at 723; *Stegall*, 653 F.2d at 186; *Sealed Plaintiff*, 537 F.3d at 190; *see also Roe v. City of Milwaukee*, 37 F. Supp. 2d 1127, 1129 (E.D. Wis. 1999) (court permitted use of pseudonym to avoid "ostracism, harassment and perhaps, discrimination"). As

[2] For brevity's sake, this brief cites only the affidavit of John Doe 1. Except where otherwise indicated, every Plaintiff's affidavit contains a similar paragraph.

explained in more detail in Plaintiffs' temporary injunction brief, gender identity transitions during childhood are highly "controversial," with "divergent views" on either side. Temporary Injunction Br. at 2–5 (quoting WPATH Guidelines).[3] Even a cursory search on the internet reveals that this is one of the more divisive issues of our day.

And many individuals have been threatened, harassed, retaliated against, or lost jobs for expressing views on this or related issues. For example, Kara Dansky, who serves on the board of a feminist organization that argues publicly that "gender identity" is a false concept, was fired from a contract job as a direct result of her statements about gender identity, even though the contract was totally unrelated to her advocacy. Dansky Aff. ¶¶ 1, 3–4, 6–7. The organization she is a part of has also received threats of violence at their events and protests requiring police intervention. Danksy Aff. ¶ 8; *see* Eileen Hamm, *Women's Liberation Front holds sold-out event at Seattle Public Library despite bomb threat, interruptions, arrests*, Feminist Current (Feb. 3, 2020), https://www.feministcurrent.com/2020/02/03/womens-liberation-front-holds-sold-out-event-at-seattle-public-library-despite-bomb-threat-interruptions-arrests/ (video of protests). And other members of her organization have lost jobs, been kicked out of businesses, and received death and rape threats for their public statements that "gender identity" does not trump biological sex. Dansky Aff. ¶¶ 9–12. There are many more examples documented online of individuals being fired, threatened, harassed, or otherwise retaliated against for their views or statements on transgender issues. Here are just a few examples:

- Dr. Kenneth Zucker, one of the leading experts in the world on gender dysphoria, was recently "unceremoniously fired" from a clinic he led for multiple decades after a "sustained campaign" against him and his view that a child's beliefs about his or her gender

[3] Plaintiffs will be filing a motion for a temporary injunction shortly after they file this motion.

identity should not be immediately "affirmed." Jesse Singal, *How the Fight Over Transgender Kids Got a Leading Sex Researcher Fired*, The Cut (Feb. 7, 2016), https://www.thecut.com/2016/02/fight-over-trans-kids-got-a-researcher-fired.html, Berg Aff. Ex. 7. Zucker was eventually vindicated, with the Center issuing a public apology and offering a settlement of over half a million dollars, but only after almost two years of litigation. *CAMH reaches settlement with former head of gender identity clinic*, CBC News (Oct. 7, 2018), https://www.cbc.ca/news/canada/toronto/camh-settlement-former-head-gender-identity-clinic-1.4854015.

- During a dispute over a school district's transgender policy in Fairfield, Iowa, students in favor of the policy began passing out black armbands to support the mandate and those who chose not to wear them were shunned and taunted as "haters," "bigots," and "rednecks." Moreover, one student posted a "hit list" on the Internet, listing Fairfield students she deemed as "homophobes" who needed to be "hit." *Transgender school policy leaves town terrified*, The Family Leader, https://thefamilyleader.com/transgender-school-policy-leaves-town-terrified/.

- A professor named Jordan Peterson was targeted after he publicly questioned the use of gender-neutral pronouns. The "lock on his office door was glued shut," and, during a subsequent speech, he was "drowned out by a white noise machine," and "[p]ushing and shoving broke out in a crowd." Jessica Murphy, *Toronto professor Jordan Peterson takes on gender-neutral pronouns*, BBC News (Nov. 4, 2016), https://www.bbc.com/news/world-us-canada-37875695.

- A feminist named Meghan Murphy was targeted for advocating that bathrooms and changing spaces should remain "safe spaces" for biological women. "Hundreds of

protestors gathered" during a speech she gave at a public library, and police escorted the attendees "out the back of the building when the talk ended." *Meghan Murphy: Canadian feminist's trans talk sparks uproar*, BBC News (Oct. 30, 2019), https://www.bbc.com/news/world-us-canada-50214341.

- When actor Mario Lopez suggested that it was "dangerous" for parents to allow "three-year-olds" to self-determine an alternate gender identity, people called for the TV personality to be fired, and his Wikipedia page was changed to read: "Mario Lopez Jr. is a transphobic and misogynistic American actor." Gwen Aviles, *Following transgender remarks, Mario Lopez faces critics on the left and right* (Aug. 1, 2019), https://www.nbcnews.com/feature/nbc-out/following-transgender-remarks-mario-lopez-faces-critics-left-right-n1038306.

- A researcher in the UK named Maya Forstater recently lost her job after "posting a series of tweets questioning government plans to let people declare their own gender." She filed an employment action, but the tribunal ruled against her, stating that her view was "not worthy of respect in a democratic society." *Maya Forstater: Woman loses tribunal over transgender tweets*, BBC News (Dec. 19, 2019), https://www.bbc.com/news/uk-50858919.

- A columnist named Jon Caldara claims that he was recently fired from the Denver Post for writing a column expressing the view that "there are only two sexes." Nicole Russell, *Social Liberal Is Silenced Over Belief That There Are 'Only 2 Sexes'*, The Daily Signal, (Jan. 23, 2020), https://www.dailysignal.com/2020/01/23/jon-caldara-accuses-denver-post-of-silencing-him-over-sex-views/.

- A group of 54 academics from around the world who have criticized various transgender-related policies recently issued a public letter to express "concern[s] about the suppression of proper academic analysis and discussion of the social phenomenon of transgenderism." According to the letter, these academics have "experienced campus protests, calls for dismissal in the press, harassment, foiled plots to bring about dismissal, no-platforming, and attempts to censor academic research and publications." *Academics are being harassed over their research into transgender issues*, The Guardian (Oct. 16, 2018), https://www.theguardian.com/society/2018/oct/16/academics-are-being-harassed-over-their-research-into-transgender-issues.

- The editor of a recent collection of essays about transgender children has written that, after publication, she experienced "ferocious attempts to silence [her]self and [her] co-editor [ ], including sustained attacks on our careers, livelihoods and reputations the likes of which we have never previously experienced in our long academic careers." Heather Brunskell-Evans, *Inventing Transgender Children and Young People* (Oct. 12, 2019), http://www.heather-brunskell-evans.co.uk/body-politics/inventing-transgender-children-and-young-people-2/.

This very case has already generated a strong reaction, long before it was even filed. When the Wisconsin State Journal reported in September 2019 that Plaintiffs' attorneys were considering challenging the District's Policy, the former spokesman for the Wisconsin Democratic Party tweeted, "This is how trans people get murdered, by the blood-drenched hate structure created by these @wisgop sacks of fucking shit." *See* Berg Aff. Ex. 8. Other tweets in response to various articles that Plaintiffs were contemplating this lawsuit include: "F*ck WI for Law & Liberty," Berg Aff. Ex. 11, "Who funds these fuckers?," Berg Aff. Ex. 11, "Being religious bigots or

Transphobic isn't protected under the constitution," Berg Aff. Ex. 10, "a group of 15 bigots," Berg Aff. Ex. 9.

Given this toxic environment, Plaintiffs are rightly concerned that they or their children will be retaliated against or harassed if their identities are made known. *E.g.*, John Doe 1 Aff. ¶¶ 23–25.[4] Disclosing Plaintiffs' identities would place them and their children at significant risk of ostracism, harassment, discrimination, economic injury, government retaliation, and even physical harm, risks that can be entirely avoided by allowing them to use pseudonyms.

Third, and relatedly, this litigation "involves matters that are highly sensitive and of a personal nature." *Sealed Plaintiff*, 537 F.3d at 190 (citation omitted); *Jacobson*, 6 F.3d at 238. As explained in more detail in Plaintiffs' temporary injunction brief, the decision whether a child with gender dysphoria should transition is a significant and controversial healthcare decision, Temporary Injunction Br. at 2–5. Parents are not only entitled to make such decisions on behalf of their children, *see* Temporary Injunction Br. at 16–17; *Parham v. J. R.,* 442 U.S. 584, 603 (1979), but healthcare decisions also traditionally receive substantial privacy protection, *e.g.* Wis. Stat. § 146.82 (confidentiality of health care records). But for the District's policy, Plaintiffs would be able to decide how to address gender dysphoria with their children without interference from the District or public scrutiny. Yet the District's policy has required Plaintiffs to disclose how they would respond if their children ever deal with gender dysphoria—Plaintiffs seek a temporary injunction precisely because they do not want the District to allow their children to transition without their knowledge and consent. *E.g.*, John Doe 1 Aff. ¶¶ 7–11. Revealing one's stance on a controversial health-related issue like this is exactly the type of "highly sensitive" and "personal"

[4] For Jane Doe 3, the corresponding paragraphs are paragraphs 14–16, and for John and Jane Doe 6, paragraphs 15–17. For every other Plaintiff, the paragraph numbering is the same as for John Doe 1.

matter that courts have recognized warrants proceeding anonymously. *See*, *e.g.*, *Roe v. Wade*, 410 U.S. 113 (abortion)*; Ullman*, 367 U.S. 497 (birth control). Indeed, the Eleventh Circuit recently noted in an abortion case that the defendants could not point to "a single published decision from any jurisdiction *denying* a plaintiff's request to proceed anonymously in a case involving abortion," and the court's own research "turned up only two." *Aware Woman Center*, 253 F.3d at 685 & n.7 (emphasis added).

Fourth, this lawsuit implicates certain Plaintiffs' religious beliefs, Temporary Injunction Br. Part I.B, *e.g.*, John Doe 1 Aff. ¶¶ 14–22,[5] which courts have recognized are a "quintessentially private matter" that warrants proceeding anonymously. *Stegall*, 653 F.2d at 181; *Elmbrook School District*, 658 F.3d at 723–24 ("[l]awsuits involving religion can implicate deeply held beliefs and provoke intense emotional responses"). Gender identity issues have profound religious significance for some parents, and the District's Policy violates such parents' constitutional right to select a treatment approach and raise their children in accordance with their religious beliefs. Temporary Injunction Br. Part I.B. The District's Policy has "force[d] Plaintiffs to reveal their [religious] beliefs" about this issue to vindicate their rights, *e.g.*, John Doe 1 Aff. ¶¶ 14–22, which could subject them or their children "to considerable harassment." *Porter*, 370 F.3d at 560.

For all these reasons, Plaintiffs have a substantial need for privacy in this case.

III. Neither the District nor the Public Has Any Interest in Plaintiffs' Identities

Courts have identified various factors for evaluating the "countervailing interests in full disclosure," *Sealed Plaintiff*, 537 F.3d at 189, and every one of these factors cuts in favor of allowing Plaintiffs' to proceed anonymously here.

[5] This claim applies to all but Jane Doe 3, John Doe 6, and Jane Doe 6.

First, this case presents "an atypically weak public interest in knowing the [Plaintiffs'] identities" due to "the purely legal nature of the issues presented." *Sealed Plaintiff*, 537 F.3d at 190. Courts have recognized that, when "disguising plaintiffs' identities will [not] obstruct public scrutiny" of important but sensitive issues, "the public[] interest" is actually *best served* by "enabling [the lawsuit] to go forward" through the use of pseudonyms because it encourages plaintiffs to raise sensitive issues "of interest to the public at large" without "fear of [ ] reprisals." *Advanced Textile Corp.*, 214 F.3d at 1072–73. Thus, for example, "the question whether there is a constitutional right to abortion is of immense public interest, but the public did not suffer by not knowing the plaintiff's true name in *Roe v. Wade*." *Id*. at 1072 n. 15. This case raises the important and purely legal question of whether a school district may constitutionally exclude parents from the decision about whether a child of theirs with gender dysphoria should socially transition to the opposite gender. Nothing in this case turns on the particular children and parents involved. The Plaintiffs do not allege that their children are materially different from other children in the District or that the Plaintiffs are materially different from other parents. Rather, the Plaintiffs simply assert legal rights belonging to all parents. And this case has "widespread implications … of interest to the public at large," *Advanced Textile Corp.*, 214 F.3d at 1072, so Plaintiffs should be allowed to raise it anonymously without risking harm to themselves or their children.

Second, there is much less of an interest in Plaintiffs' identities because this lawsuit "challeng[es] the actions of the government," as opposed to private action. *Sealed Plaintiff*, 537 F.3d at 190; *Jacobson*, 6 F.3d at 238; *Stegall,* 653 F.2d at 186. This is because challenges to the "constitutional, statutory or regulatory validity of government activity … involve no injury to the Government's 'reputation,'" whereas suits against private parties may create reputational injury or economic hardship, such that "[b]asic fairness" will often require "the defendants' accusers" to

use their real names. *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe,* 599 F.2d 707, 713 (5th Cir. 1979). Plaintiffs challenge only government activity, and, even more, only a government *policy* (as opposed to the actions of a particular government individual). The result of this case will turn entirely on the terms of the District's Policy and how the Policy interferes with parents' right to raise their child, and not on the individual circumstances of any of the particular Plaintiffs or any District staff. Thus there is no risk of reputational or economic harm that would justify requiring Plaintiffs to disclose their identities.

Third, the District will not be "prejudiced" in any way by "allowing [Plaintiffs] to press [their] claims anonymously." *Sealed Plaintiff*, 537 F.3d at 190; *Elmbrook Sch. Dist.*, 658 F.3d at 724. Again, this entire case turns on the constitutionality of the District's policy. Only a few basic facts about the Plaintiffs are necessary—that they are parents of children in the District, that they object to the Policy, their religious beliefs, etc.—and Plaintiffs have submitted affidavits (with their names redacted) to establish these facts. None of these facts are reasonably subject to dispute, and no additional facts about Plaintiffs are necessary for the District to defend its policy.[6]

Finally, consistent with Wis. Stat. § 801.21(4), Plaintiffs' request to proceed using pseudonyms is the "least restrictive means that will achieve" Plaintiffs' substantial need for privacy. Plaintiffs are not asking to keep the entire record in this case confidential or to shield anything other than their identities. The District and the public will have access to all briefs and filings in the case, including Plaintiffs' affidavits (with only their names redacted).

[6] Even if there is some fact about the Plaintiffs that the District believes it needs to raise some defense to this lawsuit, there is still no need for the District to know who the Plaintiffs are. The District can identify whatever facts it believes it needs and Plaintiffs' counsel can either stipulate to them or work with the District's counsel to allow limited discovery without disclosing the Plaintiffs' identities, such as written interrogatories.

Thus, neither the Defendant, nor the public, will suffer harm of any type if the Plaintiffs are permitted to proceed anonymously here.

* * * * *

Given that there are multiple compelling reasons to allow Plaintiffs to proceed anonymously, *supra* Part II, and that there is little to no need for the District or the public to know who the Plaintiffs are, *supra* Part III, the balance tips heavily in favor of granting Plaintiffs' motion to proceed anonymously. *Sealed Plaintiff*, 537 F.3d at 189; *Elmbrook Sch. Dist.*, 658 F.3d at 722.

CONCLUSION

For these reasons, the Plaintiffs respectfully request that this Court grant their motion to proceed anonymously.

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Respectfully Submitted,

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